
SENATE BILL No. 504

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-3-5; IC 34-24-1-1.

Synopsis: Delivery sale of cigarettes. Requires a merchant who sells cigarettes to a person in Indiana through direct mail or the Internet to: (1) ensure that the customer is at least 18 years of age; and (2) pay the state cigarette tax. Establishes penalties for violations.

Effective: July 1, 2003.

Miller

January 23, 2003, read first time and referred to Committee on Commerce and Consumer Affairs.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

SENATE BILL No. 504

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulations; consumer sales and credit.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 24-3-5 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2003]:

4 **Chapter 5. Delivery Sales of Cigarettes**

5 **Sec. 1. As used in this chapter, "cigarette" has the meaning set**
6 **forth in IC 6-7-1-2.**

7 **Sec. 2. As used in this chapter, "delivery sale" means a**
8 **transaction for the purchase of cigarettes in which an offer to**
9 **purchase cigarettes is made electronically using a computer**
10 **network (as defined in IC 35-43-2-3) or by mail and acceptance of**
11 **the offer results in delivery of the cigarettes to a named individual**
12 **at a designated address.**

13 **Sec. 3. As used in this chapter, "merchant" means a person or**
14 **an entity that engages in the selling of cigarettes by delivery sale.**

15 **Sec. 4. A merchant may not mail or ship cigarettes as part of a**
16 **delivery sale unless, before mailing or shipping the cigarettes, the**
17 **merchant:**



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(1) obtains from the prospective customer a written statement signed by the prospective customer under penalty of perjury:

(A) providing the prospective customer's address and date of birth;

(B) advising the prospective customer that:

(i) signing another person's name to the statement required under this subdivision may subject the person to a civil monetary penalty of not more than one thousand dollars (\$1,000); and

(ii) purchasing cigarettes by a person less than eighteen (18) years of age is a Class C infraction under IC 35-46-1-10.5;

(C) confirming that the cigarette order was placed by the prospective customer;

(D) providing a warning under 15 U.S.C. 1333(a)(1); and

(E) stating the sale of cigarettes by delivery sale is a taxable event for purposes of IC 6-7-1;

(2) makes a good faith effort to verify the information in the written statement obtained under subdivision (1) by using a federal or commercially available data base; and

(3) receives payment for the delivery sale by a credit or debit card issued in the name of the prospective purchaser.

Sec. 5. (a) A merchant who mails or ships cigarettes as part of a delivery sale shall:

(1) use a mailing or shipping service that requires the customer or a person at least eighteen (18) years of age who is designated by the customer to:

(A) sign to accept delivery of the cigarettes; and

(B) present a valid operator's license issued under IC 9-24-3 or identification card issued under IC 9-24-16 if the customer or the customer's designee, in the opinion of the delivery agent or employee of the mailing or shipping service, appears to be less than twenty-seven (27) years of age;

(2) provide to the mailing or shipping service used under subdivision (1) proof of compliance with section 7(a) of this chapter; and

(3) include the following statement in bold type or capital letters on an invoice or shipping document:

INDIANA LAW PROHIBITS THE MAILING OR SHIPPING OF CIGARETTES TO A PERSON LESS THAN EIGHTEEN (18) YEARS OF AGE AND

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REQUIRES PAYMENT OF ALL APPLICABLE TAXES.

(b) The alcohol and tobacco commission may impose a civil penalty of not more than one thousand dollars (\$1,000) if a mailing or shipping service:

(1) delivers cigarettes as part of a delivery sale without first receiving proof from the merchant of compliance with section 7(a) of this chapter; or

(2) fails to obtain a signature and proof of identification of the customer or the customer's designee under subsection (a)(1).

The alcohol and tobacco commission shall deposit amounts collected under this subsection into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

(c) The following apply to a merchant that mails or ships cigarettes as part of a delivery sale without using a third party service as required by subsection (a)(1):

(1) The merchant shall require the customer or a person at least eighteen (18) years of age who is designated by the customer to:

(A) sign to accept delivery of the cigarettes; and

(B) present a valid operator's license issued under IC 9-24-3 or identification card issued under IC 9-24-16 if the customer or the customer's designee, in the opinion of the merchant or the merchant's employee making the delivery, appears to be less than twenty-seven (27) years of age.

(2) The alcohol and tobacco commission may impose a civil penalty of not more than one thousand dollars (\$1,000) if the merchant:

(A) delivers the cigarettes without first complying with section 7(a) of this chapter; or

(B) fails to obtain a signature and proof of identification of the customer or the customer's designee under subsection (c)(1).

The alcohol and tobacco commission shall deposit amounts collected under this subdivision into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

Sec. 6. (a) A merchant shall, before mailing or shipping cigarettes as part of a delivery sale, provide the department of state revenue with a written statement containing the merchant's name, address, principal place of business, and each place of business in Indiana.

(b) A merchant who mails or ships cigarettes as part of a

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1 delivery sale shall, not later than the tenth day of the calendar
 2 month immediately following the month in which the delivery sale
 3 occurred, file with the department of state revenue a copy of the
 4 invoice for each delivery sale to a customer in Indiana. The invoice
 5 must include the following information:

6 (1) The name and address of the customer to whom the
 7 cigarettes were delivered.

8 (2) The brand name of the cigarettes that were delivered to
 9 the customer.

10 (3) The quantity of cigarettes that were delivered to the
 11 customer.

12 (c) A merchant who complies with 15 U.S.C. 376 is considered
 13 to satisfy the requirements of this section.

14 Sec. 7. (a) A merchant who delivers cigarettes to a customer as
 15 part of a delivery sale shall collect and remit taxes as required by
 16 IC 6-7-1 before the delivery of the cigarettes.

17 (b) A merchant who fails to comply with this section is subject
 18 to interest and penalties as provided in IC 6-8.1-10.

19 Sec. 8. The alcohol and tobacco commission may impose a civil
 20 penalty of not more one thousand dollars (\$1,000) on a:

21 (1) customer who signs another person's name to a statement
 22 required under section 4(1) of this chapter; or

23 (2) merchant who sells cigarettes by delivery sale to a person
 24 less than eighteen (18) years of age.

25 The alcohol and tobacco commission shall deposit amounts
 26 collected under this section into the youth tobacco education and
 27 enforcement fund established by IC 7.1-6-2-6.

28 SECTION 2. IC 34-24-1-1, AS AMENDED BY P.L.123-2002,
 29 SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 30 JULY 1, 2003]: Sec. 1. (a) The following may be seized:

31 (1) All vehicles (as defined by IC 35-41-1), if they are used or are
 32 intended for use by the person or persons in possession of them to
 33 transport or in any manner to facilitate the transportation of the
 34 following:

35 (A) A controlled substance for the purpose of committing,
 36 attempting to commit, or conspiring to commit any of the
 37 following:

38 (i) Dealing in or manufacturing cocaine, a narcotic drug, or
 39 methamphetamine (IC 35-48-4-1).

40 (ii) Dealing in a schedule I, II, or III controlled substance
 41 (IC 35-48-4-2).

42 (iii) Dealing in a schedule IV controlled substance

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- 1 (IC 35-48-4-3).
- 2 (iv) Dealing in a schedule V controlled substance
- 3 (IC 35-48-4-4).
- 4 (v) Dealing in a counterfeit substance (IC 35-48-4-5).
- 5 (vi) Possession of cocaine, a narcotic drug, or
- 6 methamphetamine (IC 35-48-4-6).
- 7 (vii) Dealing in paraphernalia (IC 35-48-4-8.5).
- 8 (viii) Dealing in marijuana, hash oil, or hashish
- 9 (IC 35-48-4-10).
- 10 (B) Any stolen (IC 35-43-4-2) or converted property
- 11 (IC 35-43-4-3) if the retail or repurchase value of that property
- 12 is one hundred dollars (\$100) or more.
- 13 (C) Any hazardous waste in violation of IC 13-30-6-6.
- 14 (D) A bomb (as defined in IC 35-41-1-4.3) or weapon of mass
- 15 destruction (as defined in IC 35-41-1-29.4) used to commit,
- 16 used in an attempt to commit, or used in a conspiracy to
- 17 commit an offense under IC 35-47 as part of or in furtherance
- 18 of an act of terrorism (as defined by IC 35-41-1-26.5).
- 19 (2) All money, negotiable instruments, securities, weapons,
- 20 communications devices, or any property used to commit, used in
- 21 an attempt to commit, or used in a conspiracy to commit an
- 22 offense under IC 35-47 as part of or in furtherance of an act of
- 23 terrorism or commonly used as consideration for a violation of
- 24 IC 35-48-4 (other than items subject to forfeiture under
- 25 IC 16-42-20-5 or IC 16-6-8.5-5.1 before its repeal):
- 26 (A) furnished or intended to be furnished by any person in
- 27 exchange for an act that is in violation of a criminal statute;
- 28 (B) used to facilitate any violation of a criminal statute; or
- 29 (C) traceable as proceeds of the violation of a criminal statute.
- 30 (3) Any portion of real or personal property purchased with
- 31 money that is traceable as a proceed of a violation of a criminal
- 32 statute.
- 33 (4) A vehicle that is used by a person to:
- 34 (A) commit, attempt to commit, or conspire to commit;
- 35 (B) facilitate the commission of; or
- 36 (C) escape from the commission of;
- 37 murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal
- 38 confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting
- 39 (IC 35-42-4-3), or child exploitation (IC 35-42-4-4), or an offense
- 40 under IC 35-47 as part of or in furtherance of an act of terrorism.
- 41 (5) Real property owned by a person who uses it to commit any of
- 42 the following as a Class A felony, a Class B felony, or a Class C

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felony:

(A) Dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1).

(B) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(C) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(D) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(6) Equipment and recordings used by a person to commit fraud under IC 35-43-5-4(11).

(7) Recordings sold, rented, transported, or possessed by a person in violation of IC 24-4-10.

(8) Property (as defined by IC 35-41-1-23) or an enterprise (as defined by IC 35-45-6-1) that is the object of a corrupt business influence violation (IC 35-45-6-2).

(9) Unlawful telecommunications devices (as defined in IC 35-45-13-6) and plans, instructions, or publications used to commit an offense under IC 35-45-13.

(10) Any equipment used or intended for use in preparing, photographing, recording, videotaping, digitizing, printing, copying, or disseminating matter in violation of IC 35-42-4-4.

(11) Destructive devices used, possessed, transported, or sold in violation of IC 35-47.5.

(12) Cigarettes that are sold in violation of IC 24-3-5, cigarettes that a person attempts to sell in violation of IC 24-3-5, and other personal property owned by a person who violates IC 24-3-5.

(b) A vehicle used by any person as a common or contract carrier in the transaction of business as a common or contract carrier is not subject to seizure under this section, unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a).

(c) Equipment under subsection (a)(10) may not be seized unless it can be proven by a preponderance of the evidence that the owner of the equipment knowingly permitted the equipment to be used to engage in conduct that subjects it to seizure under subsection (a)(10).

(d) Money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 found near or on a person who is committing, attempting to commit, or conspiring to commit any of the following offenses shall be admitted into evidence in an action

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under this chapter as prima facie evidence that the money, negotiable instrument, security, or other thing of value is property that has been used or was to have been used to facilitate the violation of a criminal statute or is the proceeds of the violation of a criminal statute:

(1) IC 35-48-4-1 (dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine).

(2) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance).

(3) IC 35-48-4-3 (dealing in a schedule IV controlled substance).

(4) IC 35-48-4-4 (dealing in a schedule V controlled substance) as a Class B felony.

(5) IC 35-48-4-6 (possession of cocaine, a narcotic drug, or methamphetamine) as a Class A felony, Class B felony, or Class C felony.

(6) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as a Class C felony.

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